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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,327	09/30/2003	Daisuke Kitazawa	243327US8	2260

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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER

SAFAIPOUR, BOBBAK

ART UNIT	PAPER NUMBER
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2618

NOTIFICATION DATE	DELIVERY MODE
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10/23/2007

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/673,327

Applicant(s)

KITAZAWA ET AL.

Examiner

Bobbak Safaipour

Art Unit

2618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5 and 9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2, 5, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by **Moshes Deder et al. (EP 1 050 977 A2; hereinafter Moshes Deder)**.

Consider **claim 2**, Moshes Deder discloses a transmission power control method in a radio communication system comprising a base station and mobile stations, where data retransmission is allowed in radio communication between the base station and the mobile stations (figure 2; abstract; paragraphs 20-23; transmit associate requests), wherein a transmission power margin provided to a required transmission power to satisfy a reception error rate required for radio communication between the base station and the mobile stations, is set so that the transmission power margin increases (paragraph 21; read as increases the transmit power by 2db) as the data retransmission count in an uplink or in a downlink increases (paragraph 21; read as increases the transmit power for each attempt unit reaching a maximum allowable association requests).

Consider **claim 5**, Moshes Deder discloses communication device, comprising means of determining a transmission power required for satisfying a communication service quality required for radio communication with other communication devices, and means of allocating a radio resource based on the determined transmission power and transmitting data using said radio resource, where data retransmission is allowed via said radio communication (figure 2; abstract; paragraphs 20-23; transmit associate requests), further comprising: retransmission count storing means for counting a retransmission count when a same data is retransmitted and storing said retransmission count (paragraph 21; maximum allowable association requests); margin setting means for setting a transmission power margin so as to increase the transmission power margin as said retransmission count increases (paragraph 21; read as increases the transmit power for each attempt unit reaching a maximum allowable association requests); and transmission power determination means for determining a transmission power based on the set transmission power margin and said required transmission power (paragraphs 20-23).

Consider **claim 9**, Moshes Deder discloses a radio communication system comprising a base station and a mobile station, wherein both said base station and mobile station (figure 2; abstract; paragraphs 20-23; transmit associate requests) comprise, wherein both said base station and said mobile station further comprise: retransmission count storing means for counting a retransmission count when a same data is retransmitted between the base station and mobile station and storing said retransmission count (paragraph 21; maximum allowable association requests); margin setting means for setting a transmission power margin so as to increase the

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transmission power margin as said retransmission count increases (paragraph 21; read as increases the transmit power for each attempt unit reaching a maximum allowable association requests); and transmission power determination means for determining a transmission power based on the set transmission power margin and said required transmission power (paragraphs 20-23).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Holtzman et al. (US 2002/0160783 A1; hereinafter Holtzman)** in view of **Moshes Deder et al. (EP 1 050 977 A2)**.

Consider **claim 1**, Holtzman discloses a transmission power control method in a radio communication system comprises a base station and mobile stations, comprising: determining that a communication to be transmitted from the base station to the mobile station is either real-time traffic (read as voice-data) or non-real time traffic (read as non-voice data) (paragraphs 36-37); setting a transmission power margin to a first value if the communication is real-time traffic and a second value if the communication is non-real time traffic, wherein the first value is greater than the second value (figure 1; paragraphs 36-37; The communication transmits at data rates that ensure the transmission power level is below the total allowable transmission power level); and transmitting the communication from the base station to the mobile station based on the transmission power margin set in the setting (abstract; paragraphs 17-18 and 36-37).

Holtzman fails to specifically disclose that the communication based on at least one of a transmission delay, maximum retransmission count and reception error rate corresponding to the communication.

In related art, Moshes Deder discloses communication based on at least one of a transmission delay, maximum retransmission count and reception error rate corresponding to the communication. (paragraphs 20-23; maximum allowable association requests)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Moshes Deder into the teachings of Holtzman to involve a power control system for a wireless communication system which allows adjustment of the transmit power of a wireless transmitter based on a number of acknowledgments expected for a radio transmissions.

Consider **claim 3**, Holtzman discloses a communication device, comprising: means for determining that a communication to be transmitted from the base station to the mobile station is either real-time traffic (read as voice-data) or non-real time traffic (read as non-voice data) (paragraphs 36-37); means for setting a transmission power margin to a first value if the communication is real-time traffic and a second value if the communication is non-real time traffic, wherein the first value is greater than the second value (figure 1; paragraphs 36-37; The communication transmits at data rates that ensure the transmission power level is below the total allowable transmission power level); and means for transmitting the communication from the base station to the mobile station based on the transmission power margin set in the setting (abstract; paragraphs 17-18 and 36-37).

Holtzman fails to specifically disclose that the communication based on at least one of a transmission delay, maximum retransmission count and reception error rate corresponding to the communication.

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In related art, Moshes Deder discloses communication based on at least one of a transmission delay, maximum retransmission count and reception error rate corresponding to the communication. (paragraphs 20-23; maximum allowable association requests)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Moshes Deder into the teachings Holtzman to involve a power control system for a wireless communication system which allows adjustment of the transmit power of a wireless transmitter based on a number of acknowledgments expected for a radio transmission.

Conclusion

Any response to this Office Action should be **faxed to (571) 273-8300 or mailed to:**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Hand-delivered responses should be brought to

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bobbak Safaipour whose telephone number is (571) 270-1092.

The Examiner can normally be reached on Monday-Friday from 9:00am to 5:00pm.


If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Lana Le can be reached on (571) 272-7891. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 703-305-3028.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/customer service whose telephone number is (571) 272-2600.


Bobbak Safaipoor
B.S./bs

October 15, 2007


10-15-07
LANA LE
PRIMARY EXAMINER